

Graphic Health Warnings

Clause 14(2) of the Uganda Tobacco Control Bill (UTCB) calls for graphic health warnings covering at least 75% of “each principal display area of the unit packet”¹

What the Tobacco Industry Says	The Facts
<p>The Framework Convention on Tobacco Control (FCTC) provides for “30% Health Warnings”² so there is no need to go larger than 30%.</p>	<ul style="list-style-type: none">• The World Health Organisation’s FCTC,⁷ of which Uganda and 179 other countries are party to,⁸ calls for ratifying countries to adopt and implement graphic health warnings within three years of joining the Convention. As Uganda ratified this international treaty in 2007, it is already nearly five years past the three-year benchmark for implementing graphic health warnings.• It is misleading for the industry to claim that the FCTC provides for 30% health warnings, as the FCTC actually mandates that graphic health warnings “should be 50% or more of the principal display areas” but “shall be no less than 30%”.⁹ In addition, as approximately 27% of Ugandan adults are illiterate,¹⁰ introducing large graphic health warnings will more effectively communicate the dangers of smoking to consumers and prospective-consumers that may not be able to easily interpret text warnings.• As of 2014, at least 77 countries/jurisdictions have passed graphic health warning requirements and 60 of these require warnings that cover at least 50% of the packaging.¹¹ Other countries in the African region that have passed graphic health warning legislation include Madagascar, Mauritius, Namibia, Seychelles¹² and Chad.¹³ Many leading countries in tobacco control have even gone a step further to introduce plain packaging, which requires that in addition to large graphic health warnings, all tobacco products be sold in simple packages free from logos, colours or promotional text.¹⁴ Australia became the first country to pass and implement plain packaging legislation, followed by the UK and Ireland. The French and Norwegian governments are also in the process of passing plain packaging legislation. Although the tobacco companies frequently threaten legal action to thwart these regulations and have invested tremendous resources into launching legal claims against governments, to date no industry attempt to legally challenge plain packs has been successful.¹⁵

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What the Tobacco Industry Says

“There is no credible evidence to show that... introducing graphic health warnings has resulted in a reduction in smoking rates”.³

The Facts

- According to the Canadian Cancer Society: “the effectiveness of warnings increases with size.”¹⁶ Rigorous academic research from some of the world’s leading experts in tobacco control demonstrates that the larger the size of the health warnings, the more effective they are in altering attitudes toward smoking across all socio-economic groups.¹⁷ Recent research from Australia also shows that plain packaging with larger graphic health warnings has successfully reduced the appeal of cigarette packaging to adolescents.¹⁸ In other words, tobacco control measures are having the effect they are supposed to, which is why the tobacco industry goes to such extremes to hinder them.
- Although British American Tobacco (BAT) is opposing health warnings in Kenya, employees of BAT have publicly vocalised support for graphic health warnings elsewhere. As the BAT Philippines General Manager said in 2014: “The best thing to do is put pictures. Hence we are supportive of putting photo warnings on the packs, as they say, a picture is worth a thousand words.”¹⁹

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What the Tobacco Industry Says

Health warning labels would make it easier for counterfeiters to copy cigarette packs and thus “would be an incentive for illegitimate layers to enter the market”, increasing illicit trade and costing the government revenue.⁴

The Facts

- Although tobacco companies suggest that graphic health warnings will increase illicit trade of tobacco products, the independent evidence shows this is not the case.²⁰ Most, if not all, of the research that does suggest regulating packaging of tobacco products will (or has) increased illicit trade has been funded by the tobacco industry.²¹
- Furthermore, the evidence shows that the tobacco industry has actually been complicit in smuggling its own product for decades.²² To view them as “the victims” of illicit trade is misleading as they have been active participants in increasing illicit product. Recently, BAT has been implicated in cigarette smuggling in South Africa.²³

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What the Tobacco Industry Says

It “breaches the right to property”⁵ and is an infringement of the World Trade Organisation Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement.

The Facts

- The tobacco industry has a longstanding history of using the Intellectual Property Argument to oppose legislation. Multiple legal experts around the world have stated that tobacco companies have no basis for legal challenge under trade laws such as the World Trade Organisation’s Agreement on TRIPS as the agreements allow for exceptions that are necessary to protect health (see below).²⁴
- The international trade agreements tobacco companies use to argue that graphic health warnings infringe their intellectual property rights specifically allow for exceptions to be made in the spirit of protecting public health. Article 20 (b) of the General Agreement on Tariffs and Trade (GATT) states that nothing in the Agreement can be used to “prevent the adoption or enforcement by any contracting party” necessary to protect human health.²⁵ Article 20 of the TRIPS agreement also allows for exceptions when protecting public health.²⁶ Even the Constitution of the Republic of Uganda allows for this, as it also states, “no person shall be compulsorily deprived of property” **except** when “the taking of possession of acquisition is necessary for public use or in the interest of defence, public safety, public order, public morality or **public health**” (emphasis added).²⁷ As graphic health warnings are a measure taken by the Ugandan government to protect public health and save lives, and since this measure is widely accepted as a standard tobacco control measure around the world,²⁸ it can be viewed as a justifiable infringement on economic and trade rights, which are seen as secondary to human health.

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What the Tobacco Industry Says

As health warnings would require changes in how the packaging is manufactured that would take time to accommodate, an 18-month transition period would be necessary.⁶

The Facts

- Although BAT has argued that it will take time to overcome the challenges to be able to manufacture packages for Uganda with graphic health warnings, BAT factories in Kenya, which manufactures tobacco products for 17 countries including Uganda,²⁹ already manufactures tobacco packaging with graphic warnings for export to other African countries in the region. This includes Mauritius,³⁰ which requires graphic health warnings covering 60% of the front and 70% of the back of the pack,³¹ and Madagascar,³² which requires warnings covering 65% of the front and back of the pack.³³

Restricting Interaction
Between the Tobacco
Industry and Public Officers

Part VIII of the UTCB
seeks to “Protect the
public against the
influence of and
interference by the
commercial and other
vested interests of the
tobacco industry”³⁴

What the Tobacco Industry Says	The Facts
<p>Tobacco industry involvement contributes to “the development of balanced and effective policy and legislation”³⁵</p>	<ul style="list-style-type: none"> • There is a fundamental and irreconcilable conflict between the tobacco industry’s interest and public health policy interests.³⁸ While one party seeks to promote public health to the highest standards possible, the other seeks to make profit. Because of this it is understood that the two cannot be mutually working toward the same end. This is why both the FCTC and the UTCB mandate the restriction of the industry’s access to public officers and decision makers. • Article 5.3 of the FCTC states: “In setting and implementing their public health policies with respect to tobacco control, parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law.”³⁹ • In the industry’s own words, its ultimate aim in engaging the public and policymakers is to secure a “reduction in legislation introduced and passed restricting or banning our sales and marketing activities”, while ensuring the “passage of legislation favorable to the industry”.⁴⁰ Decades of historical documents show that tobacco companies have sought and continue to seek to influence the drafting and implementation of policies so that they serve their political and business interests.⁴¹ This is the very opposite of the “balanced and effective policy” the industry claims they facilitate.

Restricting Interaction Between the Tobacco Industry and Public Officers

Part VIII of the UTCB seeks to “Protect the public against the influence of and interference by the commercial and other vested interests of the tobacco industry”³⁴

What the Tobacco Industry Says

There is no basis for “singling out the tobacco industry” as a stakeholder with vested interests from whom the public and legislation needs protection³⁶

The Facts

- The research shows that around the world, tobacco industry involvement in policy development has consistently weakened, delayed and undermined public health policy.⁴² It is precisely because the tobacco industry has repeatedly employed a vast array of tactics and strategies, both direct and indirect, in an effort to influence tobacco control policies, that their restriction in policymaking has been deemed necessary to ensure public health is protected.⁴³
- Since the future of the tobacco industry depends on its ability to increase tobacco use in low-and-middle-income countries, especially in African countries among women and children, the ways tobacco companies thwart tobacco control in these countries is more aggressive and significantly more extreme than in other parts of the world.⁴⁴

Restricting Interaction Between the Tobacco Industry and Public Officers

Part VIII of the UTCB seeks to “Protect the public against the influence of and interference by the commercial and other vested interests of the tobacco industry”³⁴

What the Tobacco Industry Says

Part VIII of the UTCB is “a misinterpretation of Article 5.3 of the FCTC” and also “unconstitutional in its discriminatory application to the tobacco industry”³⁷

The Facts

- It is important to note that both the FCTC and the UTCB do not entirely exclude the tobacco industry from stakeholder consultation, only restrict this interaction to what is necessary so that its opinions are considered equally, fairly and transparently as among all stakeholders without it having excessive and harmful access to policymakers.⁴⁵ In accordance with this, the UTCB ensures only that:
 - Where interaction is necessary with the tobacco industry, public health policies in relation to tobacco control are protected from commercial and other vested interests of the tobacco industry;
 - Any interaction with the tobacco industry is accountable and transparent,
 - No preferential treatment is given to the tobacco industry given the undeniable lethal nature and effects of their products;
 - The tobacco industry provides parties with correct and transparent information on their activities.⁴⁶
- Therefore contrary to the tobacco industry’s assertions that part VIII of the UTCB is inconsistent with the constitutional provision of consulting all stakeholders in the process of policy formulation, the UTCB seeks only to ensure this is done transparently and fairly.

Increasing the Legal Age of Purchase of Tobacco Products

The UTCB proposes to define a minor for the purposes of tobacco control as “any person below the age of 21 years”.⁴⁷ Section 16 explains that selling or supplying anyone under the age of 21 with tobacco products is prohibited.

What the Tobacco Industry Says	The Facts
<p>“At 18, one would expect a person to be an adult with a mind able to decide on what s/he wants”⁴⁸</p>	<ul style="list-style-type: none">• The reason tobacco companies do not want the age limit increased is because the younger generation offers the largest population of prospective life-long smokers; tobacco companies actively employ a variety of tactics to increase the allure of their products to young African adults.⁵⁰ In the industry’s own words, “the base of our business is the high school student”.⁵¹• Research shows that most smokers initiate the smoking habit as teenagers when they are not yet mature enough to make fully informed decisions.⁵²• The research also shows that even amongst adolescents, 18-21-year olds are particularly vulnerable to initiating smoking, and potentially life-long smoking habits. For example, according to a survey in the United States, 18-20-year-olds are twice as likely to be current smokers than 16-17-year-olds.⁵³ Australian 18-19-year olds are seven times more likely to be daily smokers than 12-17-year olds.⁵⁴• It is a common precedent around the world to set a legal age of purchase for tobacco products as well as other addictive or behaviour-altering products such as alcohol. More than 50 localities in the United States have raised the legal age of purchase for tobacco products to 21,⁵⁵ and health campaigners in India announced plans in 2014 to raise the legal age of purchase to 25.⁵⁶ Some countries are even aiming to create a “tobacco free generation” by completely banning cigarette sales to anyone born after 2000.⁵⁷

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What the Tobacco Industry Says	The Facts
<p>The Constitution “defines an adult and places the age of consent for marriage and voting at 18” and so such a measure is unconstitutional⁴⁹</p>	<ul style="list-style-type: none">• The definition of a child in the Constitution of the Republic of Uganda is subject to a given context. Article 257 (1) reads “In this Constitution, unless the context otherwise requires— ‘child’ means a person under the age of eighteen years.”⁵⁸ This allows for other age limits to be set when appropriate. For example, Article 102 (b) requires that a person cannot be qualified for election as President unless he or she is at least 35 years of age.• The UTCB would not be the only instance in Ugandan law where the age limit outlined in a particular act is set higher or different than the reference provided in the Constitution. For example:<ul style="list-style-type: none">• While Section 2 of the Children Act defines a child as a person under the age of 18 years, the same act defines the minimum age of criminal responsibility as 12 years.⁵⁹• As outlined in the act a marriage certificate cannot be issued unless there is an affidavit certifying that both parties to the marriage are 21 years, and if found under this age, the consent obtained in writing must be annexed to the affidavit. This does not mean the Marriage Act is unconstitutional.• Setting the definition of a minor to 21 within the UTCB does not mean the legal age of an adult in Uganda is increased to 21. Rather, it only means that for the purposes of enforcement of the UTCB, anyone who is 21 years and below is not able to legally purchase tobacco products. Policymakers have selected 21 years as the legal age of purchase in part because there are schools in Uganda where students up to 21 years attend. Allowing 18-21-year-olds to legally purchase tobacco products and smoke could have undue influence and exposure to younger school students.

Display Ban of Tobacco Products

Section 15(3) of the UTCB states that “A person shall not display or make visible a tobacco product at any point of sale, other than being visible momentarily at the time of a sales transaction”.⁶⁰ Section 15(5) requires that all cigarettes must be sold in packets of no less than 20 sticks.

What the Tobacco Industry Says	The Facts
<p>There is “no evidence to support a ban on tobacco displays”⁶¹</p>	<ul style="list-style-type: none">• After Canada introduced point of sale display bans, smoking prevalence in 15-19-year-olds decreased significantly from 22% in 2002 to 13% in 2009.⁶³• In the 24 months following Australia’s point of sale display ban, smoking rates among 12-24-year-olds declined from 15% to 11%.⁶⁴• Although the industry might suggest otherwise, point of sale display bans comply with international trade agreements. When the tobacco industry filed a legal claim in Norway against the display ban, the only country where it has attempted such litigation, the court ruled that the bans were legal, as they fell within the remit of reducing the harm to public health that tobacco causes.⁶⁵• As marketing and advertising of tobacco products is increasingly being prohibited, displays of tobacco products at the point of sale present an invaluable opportunity to tobacco companies to advertise their products. This is why tobacco companies fight them so fiercely.

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What the Tobacco Industry Says

Display bans would “increase the illicit tobacco trade by driving legal tobacco sales under the counter”⁶²

The Facts

- The evidence shows that after Ireland introduced display bans, there was no increase in illicit trade.⁶⁶ There is no independent evidence (i.e. not funded by the industry) to support the industry’s claim that these measures will increase illicit trade, although the industry frequently uses this argument to thwart attempts to pass tobacco control policy.⁶⁷ Illicit trade is influenced by entirely unrelated factors including the extent of corruption, prevalence of organised crime, and ineffective law enforcement.⁶⁸ A presentation given by the Uganda Revenue Authority in April 2014 stressed that illicit trade in Uganda is also driven by porous borders, limited resources and lenient penalties rather than tobacco control measures.⁶⁹

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